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OFFICE OF PETITIONS

In re Application of
Sander, et al.
Application No. 09/515,875
Filed: February 29, 2000
Title: MINIMIZING TRANSISTOR SIZE
IN INTEGRATED CIRCUITS

DECISION ON
PETITION

In re Application of
Sander, et al.
Application No. 10/042,732
Filed: April 25, 2001
Title: MINIMIZING TRANSISTOR SIZE
IN INTEGRATED CIRCUITS

This is a decision on the petition filed May 17, 2002, requesting that a continued prosecution application (CPA) under 37 CFR 1.53(d) based on prior application No. 09/515,875 be treated as an application filed under 37 CFR 1.53(b) and be accorded a filing date of April 25, 2001.

The original transmittal letter for the CPA request cannot be located in the file of prior application No. 09/515,875. So, preliminarily it must be shown that the application under § 1.53(d) was filed on April 25, 2001. To this end, the petition includes a copy of applicants' postcard receipt acknowledging receipt by the Office on April 25, 2001, of a patent application, 5 sheets of formal drawings, a check for \$710, a preliminary amendment, and a certification under 35 USC 122. This postcard receipt is not sufficiently detailed to serve as *prima facie* evidence of the filing of a CPA. See MPEP 503. Nonetheless, USPTO electronic records confirm both entry of a request for a CPA and payment of the CPA filing fee of \$710.00 in prior application No. 09/515,875 on April 25, 2001. The totality of the evidence is persuasive that the request for a CPA was filed on April 25, 2001, and subsequently misplaced in the USPTO.

In regards to the request for conversion of the CPA, USPTO records show that the issue fee was paid in the prior application on April 20, 2001. A CPA must be filed before the payment of the issue fee on the prior application. See 37 CFR 1.53(d). Since the issue fee was paid on the prior application before the CPA request was filed and the prior application has now issued as a patent, the CPA request cannot be processed as a proper CPA.

The present petition requests that the CPA request be treated as an application filed under 37 CFR 1.53(b).

A petition to accept and treat an improper application filed under 37 CFR 1.53(d) as a proper application under 37 CFR 1.53(b) must include: (1) the \$130.00 petition fee; and (2) a copy of the complete nonprovisional application, as filed, designated as the prior nonprovisional application in the application papers filed under 37 CFR 1.53(d). The petition filed May 17, 2002, is accompanied by a check for the petition fee, and a copy of the prior complete application as originally filed including the specification and drawings.

Accordingly, the petition is GRANTED.

The continuation application under 37 CFR 1.53(b) has been assigned application No. 10/042,732. All future correspondence concerning the continuing application filed on April 25, 2001, should be directed to application number 10/042,732, not to application No. 09/515,875.

The \$710 filing fee paid on April 25, 2001, for the improper \$ 1.53(d) filing in application No. 09/515,875, has been reallocated to satisfy the \$710 filing fee for continuation application No. 10/042,732.

Application No. 10/042,732 is being forwarded to the Office of Initial Patent Examination for processing as a continuation application under § 1.53(b), not as a CPA under 37 CFR 1.53(d), with a filing date of April 25, 2001, using the copy of the application papers supplied on May 17, 2002.

Telephone inquiries related to this decision should be directed to Petitions Attorney Nancy Johnson at (703) 305-0309.



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